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IN THE UNITED STATES DISTRICT COURT JUN 22 2010  
FOR THE DISTRICT OF MINNESOTA

CLERK  
U.S. DISTRICT COURT  
MINNEAPOLIS, MINNESOTA

QUANTUM LABS, INC.,  
a Minnesota corporation,

Plaintiff,

v.

DR. FRESH, INC.,  
a New York corporation,

Defendant.

CIVIL NO.: \_\_\_\_\_

COMPLAINT (JURY TRIAL  
DEMANDED)

Plaintiff Quantum Labs, Inc. ("Plaintiff") alleges and states as follows for its Complaint against Defendant Dr. Fresh, Inc. ("Defendant"):

**NATURE OF THE ACTION**

1. Plaintiff brings this action for declaratory relief, requesting the Court to declare United States Patent No. 6,945,397 B2 ("the '397 patent") not infringed, invalid, and unenforceable, and to declare that Defendant has no cause of action against Plaintiff for patent infringement.

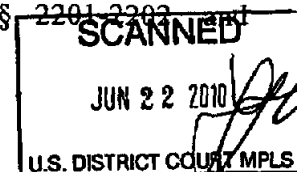
**THE PARTIES**

2. Plaintiff is a Minnesota corporation with its principal place of business at 452 Northco Drive, Suite 180, Fridley, Minnesota 55432.

3. On information and belief, Defendant is New York corporation with its registered business address at 7 Penn Plaza, Suite 1800, New York, New York 10001, and its principal place of business at 6645 Caballero Boulevard, Buena Park, California 90620.

**JURISDICTION AND VENUE**

4. The Court has subject-matter jurisdiction over this action because Plaintiff's claims arise under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, and



Defendant's threatened action implicates 28 U.S.C. §§ 1331 (federal question jurisdiction) and 1338(a) (original jurisdiction under patent laws), and 35 U.S.C. § 1 *et seq.* (federal patent laws).

5. This Court has personal jurisdiction over Defendant, which conducts substantial business in, and has substantial contacts to, the State of Minnesota, including but not limited to marketing its products to retailers and other customers in Minnesota and distributing its products to retail and other locations in Minnesota.

6. Venue in this district is proper under 28 U.S.C. §§ 1391(b)-(c) (general venue statute).

#### **FACTUAL BACKGROUND**

7. Plaintiff is a Minnesota based dental supply company, which sells products such as toothbrushes, floss, and gift bags to dental professionals.

8. Plaintiff sells a product to dentists that is marketed as a "Premium Smile Kit." The product consists of a set of plastic gift bags (a "TOOTHcase<sup>TM</sup> bag"), accompanied by separate sets of toothbrushes, toothpaste, and floss, which dentists can insert into the TOOTHcase<sup>TM</sup> bag. There are two types of TOOTHcase<sup>TM</sup> bags, one of which has a pocket on the side, and one of which has no pocket. A photograph of the Premium Smile Kit and TOOTHcase<sup>TM</sup> bag from Plaintiff's Website are attached hereto as Exhibit A.

9. On information and belief, Defendant is a multinational manufacturer and distributor of dental care products, many of which are common and ordinary dental supply products such as toothbrushes, floss, and travel kits.

10. On or about May 26, 2010, Defendant, through its legal counsel, sent a letter to Plaintiff alleging that Plaintiff was infringing on the '397 patent for a package that

contains a product and a card and includes a window for viewing the card.

11. A true and correct copy of Defendant's counsel's letter to Plaintiff is attached hereto as Exhibit B, and a copy of the '397 patent is attached hereto as Exhibit C.

12. In Defendant's letter, Defendant demanded that Plaintiff immediately cease marketing, selling, and distributing the Premium Smile Kit, provide an accounting of all Premium Smile Kits sold, and financially compensate Defendant.

13. Plaintiff sent a June 7, 2010 letter to Defendant in which Plaintiff denies any infringement of Defendant's registered patents or any other violation of law.

14. A true and correct copy of Plaintiff's letter is attached hereto as Exhibit D.

15. Defendant recently brought patent-infringement suit, based on the '397 patent, against a separate entity that sells similar dental supplies.

16. The parties have an actual and justiciable controversy regarding whether Plaintiff has violated any federal patent laws, and the Court should issue an order and judgment defining the parties' rights and obligations related thereto.

**COUNT I**  
**DECLARATORY JUDGMENT OF PATENT NON-INFRINGEMENT**  
**(28 U.S.C. § 2201)**

17. Plaintiff incorporates by reference paragraphs 1-16 above.

18. Plaintiff has not infringed on, and does not intend to infringe on, any claim of the '397 patent and has no liability for any infringement based on a proper interpretation of the intrinsic evidence for Defendant's '397 patent claims.

19. Plaintiff's dental product gift bags do not infringe on, and have not infringed on, any claim of the '397 patent, either directly or indirectly.

20. Plaintiff has not contributed to the infringement of the '397 patent by others,

Plaintiff has not actively induced others to infringe the '397 patent, nor does Plaintiff have any liability for any such infringement.

21. Plaintiff and Defendant have a concrete, actual, and imminent case and controversy that implicates Defendant's claims under federal patent law.

22. Plaintiff is therefore entitled to a judicial determination that it has not infringed the '397 patent or any other patent in which Defendant claims an interest, right, or ownership.

**COUNT II  
DECLARATORY JUDGMENT OF PATENT INVALIDITY AND  
UNENFORCEABILITY  
(28 U.S.C. § 2201)**

23. Plaintiff incorporates by reference paragraphs 1-22 above.

24. The claims of the '397 patent are invalid for failure to meet the conditions for patentability specified in 35 U.S.C. § 1 *et seq.*, including but not limited to, 35 U.S.C. §§ 102, 103, and 112.

25. The claims of the '397 patent are invalid under Title 35 of the United States Code, and more specifically under 35 U.S.C. § 102, because the claimed subject matter of the '397 patent is anticipated by the prior art.

26. The claims of the '397 patent are invalid under Title 35 of the United States Code, and more specifically under 35 U.S.C. § 103, because the claimed subject matter of the '397 patent would have been obvious to one skilled in the pertinent art in view of the prior art.

27. The claims of the '397 patent are invalid under Title 35 of the United States Code, and more specifically under 35 U.S.C. § 112, because the claims are indefinite and are not adequately described by the originally-filed written description, and because the written specification fails to enable the claimed invention and disclose the best mode.

28. The invalidity of the '397 patent renders all claims of the '397 patent unenforceable.

**RELIEF**

WHEREFORE, Plaintiff respectfully asks this Court to award judgment against Defendant as follows:

- I. Declaring that Plaintiff has no liability to Defendant's threatened claims, or any other federal claims, described in the controversy set forth in the attached Exhibits A-D;
- II. Declaring that the '397 patent is not infringed by any product manufactured and/or sold by Plaintiff;
- III. Declaring that the claims of the '397 patent are invalid and unenforceable;
- IV. Finding this an exceptional case and awarding Plaintiff its costs, disbursements, and reasonable attorney fees; and
- V. Granting such further relief as the Court deems appropriate and just.

**JURY DEMAND**

Plaintiff Quantum Labs, Inc. hereby demands trial by jury on all issues so triable.

Dated: June 21, 2010

BEST & FLANAGAN LLP

**/s/ Edward P. Sheu**

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